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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

THE GREAT ATLANTIC & PACIFIC TEA
COMPANY, INC., *et al.*,¹

Debtors.

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS on behalf of the
bankruptcy estate of THE GREAT
ATLANTIC & PACIFIC TEA COMPANY,
INC., *et al.*,

Plaintiff,

v.

MANHATTAN BEER DISTRIBUTORS,
INC.,

Defendant.²

Chapter 11

Case No. 15-23007 (RDD)

(Jointly Administered)

Adv. Pro. No. 17-08263 (RDD)

Hearing Date: December 14, 2017, 10:00 a.m. ET

Objection Deadline: October 20, 2017, 5:00 p.m. ET

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Borman's, Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kaik Save Inc. (3636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (6664); Montvale-Para Holdings, Inc. (2947); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge TLC (5965); Shopwell, Inc. (0301); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport, Inc. (0724); Tradewell Foods of Conn., Inc. (5718); and Waldbaum, Inc. (8599).

² Manhattan Beer Distributors, Inc., the Defendant named in the Committee's adversary complaint, is a member of Manhattan Beer Distributors LLC, a New York limited liability company. Manhattan Beer Distributors LLC, rather than Manhattan Beer Distributors, Inc., is a wholesale distributor of beer and other beverage products in New York State that was the supplier of the Debtors and Debtors-in-Possession while they conducted business.

**DEFENDANT’S MOTION TO DISMISS WITH PREJUDICE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS’ COMPLAINT FOR
AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS**

Pursuant to *Fed. R. Civ. P.* 12(b)(6) and *Fed. R. Bank. P.* 7012(b), defendant Manhattan Beer Distributors, Inc. (the “Defendant”) hereby respectfully moves this Court for entry of an Order dismissing with prejudice plaintiff The Official Committee of Unsecured Creditors’ *Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 & 550*. In support of this motion to dismiss, Defendant refers to and incorporates by reference its Memorandum of Law, which is filed concurrently herewith.

Defendant has made no prior request to this Court or to any other court for the relief requested by this motion to dismiss.

WHEREFORE, the Defendant respectfully requests that this Court enter an Order substantially in the form annexed hereto as Exhibit A, dismissing the Complaint with prejudice. Defendant also requests such other and further relief as this Court deems just and proper.

Dated: September 25, 2017

TANNENBAUM HELPERN SYRACUSE
& HIRSCHTRITT LLP

/s/ Michael J. Riela

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EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
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Chapter 11

Case No. 15-23007 (RDD)

(Jointly Administered)

Adv. Proc. No. 17-08263 (RDD)

**[PROPOSED] ORDER DISMISSING WITH PREJUDICE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS' COMPLAINT FOR
AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS**

Upon consideration of the motion (the "Motion") filed by defendant Manhattan Beer Distributors, Inc. ("Defendant") to dismiss with prejudice the complaint (the "Complaint") filed by plaintiff The Official Committee of Unsecured Creditors; and the Court having considered all papers filed in support of or in opposition to the Motion; and for good cause appearing; **IT IS HEREBY ORDERED** that:

1. The Motion is granted.
2. The Complaint is hereby dismissed in its entirety *with prejudice*.

3. This Court retains jurisdiction with respect to all matters arising out of or relating to this Order.

Dated: _____

HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE